

COMMISSIONERS' MINUTES – DAVIS COUNTY

WORK SESSION MINUTES

February 21, 2023

The Board of Davis County Commissioners met for a Work Session at 9:00 a.m. on February 21, 2023, in room 306 of the Davis County Administration Building, 61 South Main Street, Farmington, Utah. Notice of this meeting was given under the requirements of UCA § 52-4-202.

AGENDA AS
POSTED

Roll Call

9:00 a.m. — **Discussion on the allocation of tax benefits to non-governmental parties** — *Presented by Civil Deputy Attorney Mike Kendall*

DISCLAIMER

The meeting was an open dialogue. Critical points in the discussion have only been briefly summarized. The reader may refer to the audio recording and the publicly distributed materials for further clarification of the content. Timestamps have been noted in the minutes to aid in locating points of discussion in the audio record. The audio recording for this meeting is available based upon the County's current retention schedule.

All documents from this meeting are on file in the Davis County (DC) Clerk's office.

ROLL CALL

Davis County Commissioners in attendance: Lorene Miner Kamalu, Chair; and Randy B. Elliott. Bob J Stevenson, Vice Chair, arrived at 9:27 a.m.

Davis County Staff in attendance: Becky Wright, Deputy Clerk; Brian McKenzie, Clerk; Neal Geddes, Chief Civil Deputy Attorney; Curtis Koch, Auditor; Angie Nelson, Chief Deputy Auditor; Chris Bone, Human Resources Director; Mike Kendall, Civil Deputy Attorney; Lane Rose, Facilities Management Director; and Mitch Matern, Justice Complex Maintenance Manager.

The meeting commenced at 9:02 a.m.

WORK SESSION
DISCUSSION

Discussion on the allocation of tax benefits to non-governmental parties — *Presented by Civil Deputy Attorney Mike Kendall (Minute 01:44)*

Mike Kendall said that under section 197D of the Internal Revenue Code there is the ability, under certain circumstances, for a governmental entity to pass along the tax exemption that they would be entitled to for designing a building to a certain level that saves energy. It's a tax benefit, and because the County is not obligated to pay particular taxes, there's an option for the design professional to make a request to a governmental entity to allocate that tax benefit to the design professional.

Archiplex Group, the firm engaged to provide architectural services for the Medical Observation Wing addition at the Davis County Jail, has made a request for the tax benefit. A few years ago, the same request was made by the design professional on the Syracuse Branch Library project. Former Library Director Chris Sanford conversed with Lane, Curtis, Neal, and probably the Commissioners of that time, and a determination was ultimately made to sign off on the document submitted by the design professional for the Syracuse Branch Library. The form used by the Syracuse Library design professional, referencing IRC 197D, was presented (see Attachment A1-A7, "2020.03.12 Syracuse branch 179D Form.pdf"). The form Archiplex is using is similar but unique.

COMMISSIONERS' MINUTES – DAVIS COUNTY

Mike said he had looked at the forms, and the Internal Revenue Service website, and noted the following:
1) It's not a mandate [to allocate the tax benefit to the design professional].

2) If there was ever an audit performed, the County may be asked if there are any policies and procedures in place that would govern or identify how this process works. He added that there is not a requirement to have a policy or process for allocating the tax benefit. The form mandates that someone authorized on behalf of the County execute the document.

After providing this background information, Mike asked whether the County wants to consider putting some type of more formal process in place, or at least evaluate the process, recognizing that more requests are likely to be made as the County continues to do capital projects.

In response to a question about whether this is a one-time or on-going benefit, Mike said he doesn't know all the tax ramifications for the design firm, but they do have to ask for the benefit for the tax year in which the project was completed. The firm also has to have a separate study performed to determine whether it met the required level of energy efficiency standards.

The Auditor noted that the County has chosen not to build to LEED (Leadership in Energy and Environmental Design) standards because the cost is so great. He asked if the benefit could potentially put the County into conflict with an architectural firm, because the firm wants to design to a higher level than is good for the client in order to obtain the tax benefit for themselves.

The Facilities Management Director explained that because Utah's energy code is fairly strict, Archiplex did enough to meet the minimum standards for this federal incentive. They didn't do anything special beyond that level, and the County doesn't want them to.

For clarity, it was restated that because Davis County is a governmental entity it doesn't pay taxes and therefore doesn't get the tax break available for constructing an energy efficient building. The County can allocate the tax break it would be entitled to, if it were not a government entity, to the designer of its building.

Currently, when a request for the allocation comes in to the County, the director in charge of a project makes the recommendation. That recommendation is passed to the Commission for approval through Kissflow, an online workflow platform used to place items on the Commission Meeting agenda. The County could ask for more background in the agenda item description or for a separate memo to be vetted, or it could continue with the process already in place. In the current process, if requests are not recommended they can be held, and if they are recommended they can be processed and the Commission still has to approve them. Recommendations regarding the allocation of the tax benefit should come from the department head and Facilities Management.

It was pointed out that documents usually need to be kept for seven years for tax audit purposes, and the County would need to keep documents necessary to satisfy the IRS. Accounts payable documents are kept for four years.

Discussion was had regarding the potential value of using the tax benefit option as leverage to encourage design firms to work as good partners and take care of issues with buildings. It was asked whether it would be appropriate to include language, up front, indicating that the County may allot the benefit at its discretion based on performance. Because design firms qualify if they meet the energy standards, there was reluctance expressed about tying it to other performance criteria.

Mitch Matern joined the meeting at 9:19 a.m. and, when asked, said he would recommend the allocation of tax benefits to Archiplex. At the end of the project, the County got what it asked for regarding the energy management package for the Medical Observation Wing. Between the architect and their consultant and the commissioning agent hired by the County, the building is an energy efficient facility. There was some discussion of an energy issue with the sally port, but it was caught early by the commissioning agent and the design firm addressed it.

Lane indicated that the allocation decision process should be simple – it's a yes or no answer to the question, "Did they meet the standard?" In addition, he reminded everyone that there is a requirement for the design firm to provide third party verification that they met the requirements.

Mitch said he would like some sort of letter, or maybe a small checklist, to indicate that the project was constructed appropriately or to provide background regarding problematic issues.

COMMISSIONERS' MINUTES – DAVIS COUNTY

Mike asked Mitch if the current system of putting the request through Kissflow for Commission approval will work for him, as there is an option to submit a memo or to not recommend it. It's also an option to have a work session to discuss issues that need to be addressed. Mike said it seemed that everything pointed to staying with the baseline of determining whether the design firm met the energy efficiency standards and how much babysitting the commissioning agent or County needed to do to get them to meet it. That gives Facilities Management a voice and allows the Commission the opportunity to evaluate that voice.

In summary, Brian said, the consensus is to maintain the status quo, as far as the process, and evaluate each event by its merits as to how well it performed in regards to meeting those energy efficiency standards. At that point, the department head can make a recommendation to the Commission to consider granting this benefit.

Mike gave a reminder that a document has to be signed by an authorized agent of the County. After processing, it would be presented to the Commission Chair to sign.

Chris Bone asked about the risk to the County, if the IRS were to call into question the energy efficiency of a building for which the tax benefit was allocated. Mike said the design firm does not want to incur the cost of the additional evaluation before obtaining the support of the governmental entity, so Commissioners are agreeing to support the allocation subject to a special inspection that's performed by the independent third party, so the risk overall is minimal.

Mike questioned whether the basis of the asset could be impacted by the tax deduction amount. The Auditor said he wouldn't see this reducing the base amount of the project; it cost the taxpayer a certain amount of dollars, so we depreciate over that time the full amount.

Commissioner Kamalu summarized the decision as continuing to use the current process for considering the allocation of tax benefits to non-governmental parties. The request for approval by the Commission should go through the agenda item workflow, with more description if it is warranted.

ADJOURNMENT

The meeting was adjourned at 9:43 a.m.

MATERIALS PRESENTED

All publicly distributed materials associated with this meeting are noted as the following attachments:

A1-A7. "2020.03.12 Syracuse branch 179D Form.pdf"

Minutes prepared by:

Becky R. Wright

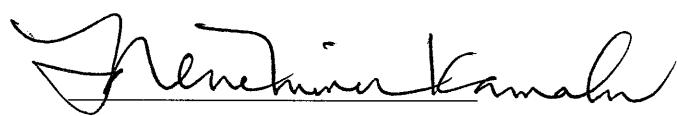
Deputy Clerk



Brian McKenzie
Davis County Clerk

Minutes approved on:

3/14/23

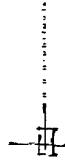


Lorene Miner Kamalu
Commission Chair

SECTION 179D ENERGY EFFICIENT COMMERCIAL BUILDINGS DEDUCTION ALLOCATION FORM

As part of the Energy Policy Act of 2005, Congress enacted Section 179D of the Internal Revenue Code to encourage the design and construction of energy efficient buildings. Per IRC §179D(d)(4) and Notice 2008-40, building owners of energy efficient commercial buildings may take a deduction arising from the installation of energy efficient commercial building property as part of the interior lighting, HVAC and hot water systems, or building envelope systems. If the building owner is a government entity, they may allocate the deduction to a designer of the energy efficient commercial building property. A review of all energy efficient systems in the allocated building(s) will be performed on behalf of the building owner. If allocable deductions are identified, they will be allocated to the eligible designers as identified below.

a/c Architects created technical specifications for the installation of the energy efficient commercial building property which resulted in reduced energy consumption and is eligible to be allocated the 179D Energy Efficient Commercial Building Deduction. Specifically, *a/c Architects* created the technical specifications as the architect of record on the construction project listed on page two of this allocation form.



The role of the allocating government entity is to confirm the scope of work performed and related information provided herein as eligible to pursue for the IRC §179D deduction by the taxpayer seeking the allocation, and not for determining if in fact the commercial building property is energy efficient.

Davis County hereby allocates *a/c Architects* the Section 179D deduction for the property described below:

Davis County Building Information					
Property Name	Property Address	Placed in Service	Cost of Property	Allocation Percentage	
Syracuse/Northwest Library Branch	1875 S. 2000 W. Syracuse, UT 84075	October 2019	\$4,608,364.15	100%	

Following a third-party certification by a licensed professional engineer or contractor in the jurisdiction of the building, Davis County will be provided with a summary analysis detailing the energy-saving improvements and the final Section 179D deduction amount.

The authorized owner representative is not responsible for certification of the energy efficient commercial building property. The taxpayer receiving the allocation is solely responsible for obtaining the required certification and onsite verification and for ensuring their accuracy and substance.

Davis County Representative Information	
Representative Name:	Chris Sanford
Government Entity Name:	Davis County
Title:	Library Director
Mailing Address:	133 S Main St Farmington, UT 84025 P.O. Box 115
Telephone Number:	801451-3051
Email:	chris@co.davis.ut.us
 ajc Architects Representative Information	
Representative Name:	Jill Jones
Eligible Taxpayer Entity Name:	ajc Architects
Title:	President
Address:	703 E. 1700 S.
Telephone Number:	801-466-8818
Representative Email:	jones@ajcarchitects.com

Under penalties of perjury, I declare that I have examined this allocation, including accompanying documents, and to the best of my knowledge and belief, the facts presented in support of this allocation are true, correct, and complete.

AGREED TO AND ACCEPTED:

DocuSigned by:
Chris Sanford
Signature [ajc Architects Representative]

3/12/2020
Date

Certificate Of Completion	
Envelope Id: 859007D-9E0C-45B3-B182-C08C5FB/AOCE	Status: Completed
Subject: Please DocuSign: UPDATED COST - 179D Allocation Letter - Davis County.pdf	
Source Envelope:	
Document Pages: 3	Signatures: 1
Certificate Pages: 4	Initials: 0
AutoNav: Enabled	
Envelope Stamping: Enabled	
Time Zone: (UTC-05:00) Pacific Time (US & Canada)	
 Record Tracking	
Status: Original	Holder: Natalie Cid Natalie.Cid@alliangroup.com
3/12/2020 10:20:27 AM	Location: DocuSign
 Signer Events	
Chris Sanford	Signature
chris@co.davis.ut.us	DocuSigned by <u>Chris Sanford</u> Signature
Security Level: Email, Account, Authentication (None)	
Using IP Address: 163.180.215.253	
 Electronic Record and Signature Disclosure:	
Accepted: 3/12/2020 0:44:22 AM	Timestamp
ID: 6f1124e-58b1-4cd-d-bc13-a83ea25e7b8c	Sent: 3/12/2020 0:21:15 AM
Viewed: 3/12/2020 10:44:22 AM	
Signed: 3/12/2020 10:46:55 AM	
 In Person Signer Events	
 Editor Delivery Events	
 Agent Delivery Events	
 Intermediary Delivery Events	
 Certified Delivery Events	
 Carbon Copy Events	
 Witness Events	
 Notary Events	
 Envelope Summary Events	
Envelope Sent	Status
Certified Delivered	Hashed/Encrypted
Signing Complete	Security Checked
Completed	Security Checked
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 Electronic Record and Signature Disclosure	

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Required hardware and software

Operating Systems:	Windows2000Ã˜ or WindowsXPÃ˜
Browsers (for SENDERs):	Internet Explorer 6.0Ã˜ or above
Browsers (for SIGNERS):	Internet Explorer 6.0Ã˜, Mozilla Firefox 1.0, NetScape 7.2 (or above)
Email:	Access to a valid email account
Screen Resolution:	800 x 600 minimum
Enabled Security Settings:	A ² Allow per session cookies A ² Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection

* These minimum requirements are subject to change. If these requirements change, we will provide you with an email message at the email address we have on file for you at that time providing you with the revised hardware and software requirements, at which time you will have the right to withdraw your consent.

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To confirm to us that you can access this information electronically, which will be similar to

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